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### **JURISDICTIONAL STATEMENT**

Midwest Foster Care and Adoption Association adopts the jurisdictional statement set forth in Relator's brief.

### **STATEMENT OF INTEREST**

Midwest Foster Care and Adoption Association ("Midwest Foster Care") is a non-profit organization that was established in 1999. Midwest Foster Care offers many resources and programs to the approximately 4,900 foster families in the State of Missouri. The mission of Midwest Foster Care is to provide foster and adoptive children with the opportunity of a stable, caring and nurturing family environment by recruiting, training, supporting and providing personal advocacy for foster and adoptive parents. The ruling in this case will impact directly the foster and adoptive families that Midwest Foster Care supports because the ruling will effect the ability of a foster parent or other individual to adopt a child who is in foster care in Missouri.

### **STATEMENT OF FACTS**

Midwest Foster Care adopts the Statement of Facts set forth in Relator's brief with

one addition. The trial court entered an Order of Court Following Permanency Hearing on September 29, 2003. (Appendix to Relator's Brief, pages 25-28). In that Order, the trial court ordered adoption as the permanency plan for the child. The trial court ordered the Division of Family Services to make inquiries of relatives and other persons to identify persons interested in pursuing adoption of the child. (Appendix to Relator's brief, page 27). The trial court found that the child had adjusted well to her foster home placement, which was with Judy Wilckens, the petitioner in the underlying adoption case. (Appendix to Relator's brief, page 26).

## **ARGUMENT**

### **I. \_\_\_\_THE TRIAL COURT WAS CORRECT IN DENYING RELATOR'S MOTION TO DISMISS BECAUSE THERE ARE NO INCONSISTENCIES BETWEEN PROCEEDING WITH THE ADOPTION CASE AND THE ORDERS ENTERED BY THE COURT IN THE CHILD'S R.S.Mo SECTION 211 CASE IN THAT THE TRIAL COURT ORDERED ADOPTION AS THE PERMANENCY PLAN FOR THE CHILD.**

Midwest Foster Care supports and adopts the Argument set forth in the respondent's brief. In addition, Midwest Foster Care urges this Court to deny relator's request that a permanent writ of prohibition issue because such action would be harmful and devastating to every foster child in Missouri who is currently available for adoption and to those whose

case goals include adoption. Such action would essentially prohibit any Court from proceeding with an adoption action if the child is in foster care. This would deny the child a stable and permanent home and would clearly be against the child's best interests. Such action would contravene the intent of the Missouri legislature and be in violation of the Adoption and Safe Families Act, PL 105-89.

**A. \_\_\_\_ The goal in all Missouri adoption cases and cases arising under RSMo. Sec. 211 et seq. is to promote permanency and stability in children's lives and a decision in favor of Relator would defeat and permanently impede that goal.**

It is a tragic circumstance when a child must be removed from the care and custody of the child's parents and placed in the care and custody of the Children's Division. The most recent statistics show that there are currently 11,313 children in the custody of the Children's Division who are in foster care. Of those children, 1,980 are children who are currently available for adoption, meaning that the parental rights of those children have already been terminated. *See* Missouri Department of Social Services Caseload Counter, April, 2005 (Appendix, page A34). Countless others of the children residing in foster care will not be reunified with their parents and will be available for adoption in the future.

If Relator's position is correct, then no foster parent who has physical custody of a child would ever be able to petition the court to terminate the parents' rights and to adopt the child while the child's Chapter 211 case is pending. All children in Missouri who are in foster care are there pursuant to an order that has been entered in the child's Chapter 211

case. Thus, a decision in relator's favor would mean that no children in foster care could be adopted. For an adoption case to proceed, relator would have the court first dismiss the Chapter 211 proceeding. Such action would be irresponsible and harmful to a child. It would result in a lapse of care and custody of the child and put the child in limbo. What if the Chapter 211 case is dismissed and the court in the Chapter 453 adoption case denies the adoption petition? The child would be at risk and this is certainly not a course of action that should be promoted by this Court.

It is quite clear that the Missouri legislature intends for its laws to be interpreted so that the best interests and welfare of each and every child is promoted by any action taken by a court that has jurisdiction of a child. Under Chapter 211, the Missouri legislature stated that "the child welfare policy of this state is what is in the best interests of the child." RSMo Sec. 211.011. The legislature further stated that Chapter 211 shall be liberally construed so that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control as will conduce to the child's welfare and the best interests of the state, and that when such child is removed from the control of his parents, the court shall secure for him care as nearly as possible equivalent to that which should have been given him by his parents. *Id.*

Moreover, under Chapter 453, the adoption statutes are to be construed "so as to promote the best interests and welfare of the child in recognition of the entitlement of the child to a permanent and stable home. RSMo Sec. 453.005.1. Missouri courts have repeatedly stated that the paramount goal and consideration in an adoption proceeding is to

promote the best interests of the child. *In the Matter of C.D.G. and D.S.G.*, 108 S.W.3d 669, 674 (Mo. App. 2002); *In the Interest of M.F.*, 1 S.W.3d 524, 532 (Mo. App. 1999).

To promote and further these goals, Midwest Foster Care urges this Court to deny Relator's request that the trial court be ordered to sustain his motion to dismiss the adoption proceeding. A ruling in relator's favor would set a damaging precedent for the thousands of Missouri children who are residing in foster care and in particular, for those children who are currently waiting to be adopted. Such a ruling would effectively prohibit any of these children's foster parents or other individuals from pursuing the adoption of these children. The children would remain in foster care indefinitely. They would not have what every child needs most, which is a stable and permanent home with parents who love and care for them. This is certainly not what the legislature intended by enacting RSMo Sec. 211.093.

A ruling in relator's favor would also substantially increase the financial cost in Missouri for caring for children in foster care. On average, it costs the State of Missouri approximately \$15,000.00 per year to support a child in foster care. If these children cannot be adopted by their foster parents or other suitable individuals, the children would remain in foster care indefinitely and continue to be supported by the State. Such a result would impose an astronomical financial burden on the state. It is unfathomable to believe that the Missouri legislature intended such a result in enacting RSMo. Sec. 211.093.

The children residing in foster care in Missouri are entitled to permanency, stability and parents who love and care for them. Midwest Foster Care urges this Court to further

this goal by denying Relator's request to issue a permanent writ of prohibition. The trial court must be allowed to proceed with the adoption action and give this child, and all the other foster children in Missouri, the opportunity to be secure and safe in a permanent, stable home with parents who love and care for them.\_\_\_\_

**B. A ruling in Relator's favor would be a violation of the Adoption and Safe Families Act of 1997 because such a ruling would be contrary to the Act's goal of promoting the adoption of children in foster care.**

The primary goal of the federal Adoption and Safe Families Act of 1997, PL105-89, ("ASFA") is to promote the adoption of children residing in foster care. The ASFA was intended to encourage permanent living arrangements for children residing in foster care as early as possible. A ruling in Relator's favor would thwart and permanently impede this goal because such a ruling would prohibit a prospective parent from adopting a child residing in foster care.

The ASFA was intended to remove barriers, both state and federal, to adoption of foster children. The ASFA's goal of ensuring that children are entitled to a permanent home as early as possible is a departure from previous statutes and subordinates parental rights to the child's right to safety and a permanent home. *See* Kemper, Kurtis A., J.D., Construction and Application By State Courts of the Federal Adoption And Safe Families Act and Its Implementing State Statutes, 2003 A.L.R. 5<sup>th</sup> 3.

The House Report regarding the ASFA sets forth that scientific studies have shown

and testimony before the House committee reflected that “adoption is an effective way to assure that children grow up in loving families and that they become happy and productive citizens as adults”. H.R. 105-77, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. 1997, at page 8. The House Report goes on to state that “[t]here seems to be universal agreement that adoption is preferable to foster care and that the nation’s children would be well served by a policy that increases adoption rates.” H.R. Rep. 105-77, at page 8.

The policy behind the ASFA is to remove barriers to the adoption of foster children and to promote moving children into permanent adoptive homes at a faster rate than had occurred in the past. If the trial court in this case is not allowed to proceed with the adoption action, the ASFA would be violated. If the adoption case cannot proceed, the ASFA’s primary goal of promoting the adoption of children in foster care would be defeated. The child in this case is now 16 years old. She was removed from her parents’ custody when she was only 7 years old. How much longer must this child wait for permanency and stability in her life? Certainly, the Missouri legislature did not intend for RSMo Sec. 211.093 to prohibit the adoption of such a child by her foster parent.

Additionally, the ASFA provides a financial incentive to States to aid in the promotion of the adoption of children in foster care. Each state receives an incentive payment for every adoption of a child out of foster care above the number of foster children adopted in the previous year. If this Court rules in Relator’s favor, such a ruling would cut off this source of federal funding for the State of Missouri. This is certainly not in the State’s best interests.

## **CONCLUSION**

Midwest Foster Care urges this Court to hold that the trial court acted within its jurisdiction in denying Relator's motion to dismiss the adoption petition. Such a ruling would not violate RSMo Sec. 211.093 because it would be consistent with the orders entered by the trial court in the child's Chapter 211 matter. The trial court has ordered adoption as the permanency plan for the child so proceeding with the adoption case is consistent with the Chapter 211 case.

The Missouri government has already moved toward making it more difficult to adopt foster children in Missouri by making drastic reductions and in some cases, elimination, of the adoption subsidy provided to families who adopt foster care children. A ruling by this Court in Relator's favor would make it even more difficult, if not impossible, for children in foster care in Missouri to be adopted. Children are in foster care because their parents cannot or will not provide them with proper care, love and support. The judicial system must provide them with an opportunity to grow up in safe, caring and loving families by way of adoption. A ruling denying Relator's request for a permanent writ of prohibition will do so.

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 84.06(c), the undersigned certifies that the foregoing brief was prepared using Microsoft Word. The font used to prepare the foregoing brief is Times New Roman with a 13-point type. The foregoing brief complies with the limitations set forth in Rule 84.06(b) and contains 2268 words.

Pursuant to Rule 84.06(g), the undersigned certifies that the disk containing the foregoing brief and filed with the Court has been scanned for viruses and it is virus- free.

\_\_\_\_\_  
Sanford P. Krigel

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing brief and a disk containing the foregoing brief were mailed, postage prepaid, this \_\_\_\_\_ day of June, 2005, to the following:

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